A.F.R.

(76)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

W.P. No.4286 of 2006

PETITIONER : D.M. Laxman Rao
S/o Shri D. Ranga Rao
Aged about 51 years,
Ex. Asst. Guard, S.E.C. Rly. Bilaspur,
Resident of (Village) Nipania,
District : Raipur (C.G.)

VERSUS

RESPONDENTS

1. **Union of India**
Through : The General Manager,
S.E.C. Railway, Bilaspur Zone,
Zone Office, BILASPUR 495 001

2. **The Divisional Railway Manager (P),**
South East Central Railway,
Bilaspur Division,
Bilaspur 495001

3. **The Sr. Divisional Personnel Officer,**
South East Central Railway,
Bilaspur Division,
Bilaspur 495001

4. **The Divisional Operations Manager**
(CIC) S E C Railway,
Bilaspur Division,
Bilaspur 495001

5. **Central Administrative Tribunal, Jabalpur Bench,**
Through : The Registrar,
Central Administrative Tribunal
Caravs Building, Civil Lines,
JABALPUR (MP)

Present: Shri B.P. Rao, learned counsel for the petitioner.
Shri Amit Chaudhari, learned Standing Counsel for Railways / respondents No. 1 to 4.

ORAL ORDER
(Passed on 11th August, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

(77)

The Central Administrative Tribunal, Jabalpur Bench (for short "the Tribunal") has rejected the Original Application filed by the petitioner on the ground of delay and latches and barred by the limitation. The facts are not in dispute. After conducting the departmental enquiry against the petitioner on certain alleged misconduct, the petitioner was dismissed from service as a disciplinary measure by the Disciplinary Authority as far back as on 20-06-1997. Although under the relevant conduct and appeal regulations he ought to have preferred the appeal within 45 days, he filed the appeal only on 26-05-2001. That appeal was dismissed by the Appellate Authority on 30-07-2002. After lapse of four years, the petitioner instituted O.A. No. 411 of 2006 before the Tribunal. The Tribunal has dismissed the appeal as being barred by limitation. Hence, the petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India.

(2) We have heard learned counsel for the parties. It was contended by learned counsel for the petitioner that after dismissal of the appeal filed by the petitioner by the Appellate Authority on 30-07-2002, he had been making representation to the Administrative Department to grant him relief and his last representation was rejected by the department only on 24-01-2005 and thereafterwards within a period of one year and six months, that is to say, without much loss of time, he instituted Original Application before the Tribunal and therefore, the Tribunal is not justified in dismissing the Original Application without going into the merits on the ground of limitation. We have also heard Shri Amit Chaudhari, learned Standing Counsel for the Railways.

(3) Having heard learned counsel for the parties, we do not find any good ground to step-in under Articles 226 and 227 of the Constitution of India and interfere with the impugned order passed by the Tribunal.

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Although the Disciplinary Authority passed the order on 20-06-1997, after lapse of roughly four years, the appeal was preferred on 26-05-2001. There is no satisfactory explanation for that enormous delay. Be that as it may, even after the Appellate Authority dismissed the appeal filed by the petitioner on 30-07-2002, the petitioner did not institute Original Application before the Tribunal within a reasonable time. The petitioner's say that he made several and repeated representations to the department and that his last representation was rejected by the department only on 24-01-2005, even if it is correct, that circumstance itself would not enure to the benefit of the petitioner to seek condonation of the enormous delay. The law on the point is well settled. By virtue of the judgments of the Apex Court in **Rajalakshmaiah Setty, K.V. Vs. State of Mysore [1] ; Maltair Jagdish Narain Vs. State of Bihar [2] ; Gian Singh Mann Vs. P & H High Court [3] ; State of Jammu & Kashmir Vs. Ashok Kumar Gupta (Dr.) [4]** , it is well settled that pursuit of an extra-legal remedy, such as a departmental representation or correspondence in the nature of an appeal (not statutory appeal or appeal provided under the administrative instructions) for mercy is no ground for condoning the delay. Furthermore, as held by the Apex Court in **Rabindra Nath Bose Vs. Union of India [5] ; State of Orissa Vs. Pyarimohan Samantarav [6] ; State of Orissa Vs. Arun Kumar Patnaik [7] ; Union of India Vs. S.S. Kothiyal [8] ; State of Kerala Vs. O.C. Kuttan [9] ; Naib Subedar Lachhman Dass Vs. Union of India [10]**, making repeated

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1. AIR 1967 SC 993 (997 : 1967 (1) SCR 807
2. AIR 1973 SC 1343 (Para 8) : (1973) 1 SCC 811
3. AIR 1980 SC 1894 (Para 3) : (1980) 4 SCC 266
4. (1996) 2 SCC 82 (Para 3) : AIR 1996 SC 2882
5. (1970) 2 SCR 697 : AIR 1970 SC 470 : (1970) 1 SCC 84
6. AIR 1976 SC 2617 (Para 6) : (1977) 3 SCC 396
7. AIR 1976 SC 1639 (Para 14) : (1976) 3 SCC 579
8. (1998) 8 SCC 682 (Para 3) 9. (1999) 2 SCC 651 (Para 6) : AIR 1999 SC 1044
10. (1977) UJSC 355 : AIR 1977 SC 1979 : (1977) 2 SCC 584

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representations, after rejection or dismissal of the statutory appeal, would not exonerate delay in moving the Court or Tribunal and that pursuing ill-conceived remedy has been held not to be a proper explanation for delay.

(4) In the circumstance, we dismiss the writ petition. No costs.

Sd/-
Chief Justice

Sd/-
D.R. Deshmukh
Judge